In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 234

GIULIO BRUNI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In a jury-waived trial in the United States District Court for the Northern District of Illinois, Eastern Division, petitioner was convicted on all four counts of an indictment charging him with conspiring to forge and counterfeit currency of the United States (Count I), unlawful possession of printing plates (Count II), conspiring to pass counterfeit obligations of the United States (Count III), and possession and concealment of counterfeit Federal Reserve notes (Count IV). He was sentenced to a term of five years in prison, to run concurrently with a five-year sentence which he had been given by the United States District Court for the Eastern District of Wisconsin for passing and uttering counterfeit Federal Reserve notes (Pet. App. 4). The Court of Appeals for the Seventh Circuit affirmed both convictions (359 F. 2d 807 and 802, respectively). A petition for a writ of

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certiorari to review the Wisconsin conviction is now pending before this Court (No. 182, this Term).

1. The earlier conviction in the Eastern District of Wisconsin was on two counts of an indictment charging petitioner with passing and uttering counterfeit Federal Reserve notes at Lowell, Wisconsin, and Astico, Wisconsin, on September 13, 1964. The same two acts were cited by the prosecution as among the overt acts done in furtherance of the conspiracy alleged in Count III of the instant indictment (Pet. 6–7), and evidence of these overt acts was admitted at the trial below (Pet. 7). Petitioner contends that the specification and proof of the two acts of September 13, 1964, as overt acts pursuant to the Count III conspiracy twice placed him in jeopardy in violation of the Fifth Amendment. However, in the proceeding in the Eastern District of Wisconsin he was not tried on a charge of conspiracy—that count having been dropped by the prosecution before trial—but only on the substantive counts, which charged separate and distinct offenses from the conspiracy to commit them, and thus did not bar his later prosecution for that conspiracy. *Pereira* v. *United States*, 347 U.S. 1, 11; *United States* v. *Bayer*, 331 U.S. 542; *Pinkerton* v. *United States*, 328 U.S. 640, 644. In any event, since a five-year sentence was authorized by each of the statutory provisions under which petitioner was convicted, any one of the four counts will support the sentence. The counts other than conspiracy were clearly separate and distinct from the offense charged in the Wisconsin trial.

2. Petitioner's only attack upon his conviction on Counts I, II and IV is that the evidence was incredible. Both courts below having found the evidence sufficient, there is no occasion for further review. *Scales* v. *United States,* 367 U.S. 203; *United States* v. *Johnson,* 319 U.S. 503.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JULY 1966.

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